

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 32**

(Oakland, California)

HELIOS HEALTHCARE LLC d/b/a
THE RIDGE CARE and REHABILITATION CENTER

Employer

and

NANCY FORONDA, an Individual

Case 32-RD-1453

Petitioner

and

HEALTHCARE WORKERS' UNION, LOCAL 250,
SERVICE EMPLOYEES INTERNATIONAL UNION,
AFL-CIO¹

Union

DECISION AND DIRECTION OF ELECTION

The Employer operates a nursing home at its facility in Salinas, California. The Union represents a collective-bargaining unit consisting of certain of the Employer's employees at this facility. The Petitioner, Nancy Foronda, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to decertify the Union as the collective bargaining representative of the employees in the collective-bargaining unit. A hearing officer of the Board conducted a hearing in this matter on May 18, 2004. The Employer and the Petitioner participated in the hearing. Although the Union was given due notice of the hearing, it did not appear at, or participate,

¹ The name of the Union appears as corrected, based on the wording of its name in the collective bargaining agreement in this case, as well as the wording of its name in other cases filed with the Region.

in the hearing. The parties were afforded the opportunity to make oral closing argument at the end of the hearing, and the Employer made such a closing argument. I note that no party has raised any arguments or presented any evidence establishing that an election should not be held in this matter, and I have concluded that an election is warranted in this case. The evidence and reasons supporting my decision are set forth below.

THE FACTS

The Employer is a California limited liability corporation engaged in the business of providing long term medical care to patients through the operation of its nursing home facility. The Employer has, in the course and conduct of its business operations, generated gross revenues in excess of \$100,000 within the twelve month period immediately preceding the filing of the petition herein. Within that same period, the Employer has purchased and received goods originating from locations outside the state of California valued in excess of \$3,000.²

The Union and the Employer were parties to a recently expired collective bargaining agreement, effective by its terms during the period July 1, 2003 to April 30, 2004. As set forth in that agreement, the Union is the collective bargaining representative of the Employer's employees at the Employer's Salinas facility who are employed in the following job classifications:

certified nursing assistants, restorative nursing assistants, nursing assistants, care partners uncertified assistive personnel, cooks, dietary aides, housekeepers, janitors, laundry aids, maintenance workers.³

² Based on the above referenced evidence, I conclude that the Employer meets the Board's jurisdictional standards for nursing homes and is an employer engaged in commerce. East Oakland Health Alliance, 218 NLRB 1270 (1975).

³ The collective bargaining agreement also provides that temporary employees, guards and supervisors as defined in the Act are excluded from the unit. The Employer introduced uncontested evidence that 35 individuals have not been included in the unit by the parties and are supervisors within the meaning of the Act, because they have some or all of the following authority over some other employees: the authority to hire, fire, discipline, direct work and grant employees time off. These individuals are in the following job

The evidence shows that the Union has pursued grievances on behalf of employees in the unit described above, and that the Employer has bargained with the Union concerning such grievances. On about January 26, 2004, the Union, by fax, notified the Employer of its desire to modify the terms of the soon to expire collective bargaining agreement and requested that the Employer to provide certain information the Union wanted for the forthcoming negotiations for a successor collective bargaining agreement.⁴ As of the date of the hearing, the Employer and the Union had engaged in one bargaining session for a successor agreement.⁵

ANALYSIS

It is well established that in a decertification election the bargaining unit in which the election is held must be coextensive with the certified or recognized unit. Campbell Soup Co., 111 NLRB 234 (1955); W.T. Grant Co., 179 NLRB 670 (1969); Bell & Howell Airline Service Co., 185 NLRB 67 (1970); Mo's West, 283 NLRB 130 (1987). Here the

classifications: Director of Nursing, Assistant Director of Nursing, MDS Coordinator, Director of Maintenance, Housekeeping Supervisor, Laundry Supervisor, Charge Nurses, Activity Director, Receptionist, Payroll Manager and Accounts Receivable Manager. Because the evidence shows that the parties have not historically treated these individuals as being in the unit, and because these job classifications are not included in the unit I have found to be appropriate in this case, the individuals in these job classifications will not be eligible to vote in the election. I therefore find it unnecessary to determine whether these individuals are supervisors within the meaning of the Act.

⁴ The collective bargaining agreement also provides that the collective bargaining agreement will automatically roll over for another year if neither party gives notice of its intent to amend the agreement at least 90 days prior to the April 30, 2004 expiration date. Here the Union's notice of intent to amend was received by the Employer more than 90 days prior to the April 30 expiration date.

⁵ The expired collective bargaining agreement contains a union security clause, a grievance and arbitration procedure, dues deduction, and other relevant provisions regarding employee wages and benefits. The record also reflects that the Union had administered that collective bargaining agreement as evidenced by having grievance meetings with the Employer, and by accepting dues payments made by the Employer pursuant to the employees' dues deduction cards. I note that in a letter to employees accompanying the collective bargaining agreement, the Union requested that employees participate in the Union. I also take administrative notice that in prior Board cases, the Board has found the Union to be a labor organization: California Pacific Medical Center, 337 NLRB 910 (2002); Healthcare Workers Local 250, SEIU, 321 NLRB 382 (1996). Finally, the Union has asserted its labor organization status in other Region 32 representation cases; such as, Covenant Care, Inc., Case 32-RC-5032. Under these circumstances I find that the Union is a labor organization within the meaning of Section 2(5) of the Act. Mac Towing, Inc., 262 NLRB 1331 (1982).

unit in which the election is sought is co-extensive with the contractual/recognized unit. As there are no other issues or reasons to preclude processing the petition in this case, I have decided to direct an election in this case.

CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The Union claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time certified nursing assistants, restorative nursing assistants, nursing assistants, cooks, dietary aides, housekeepers, janitors, laundry aids, maintenance workers; excluding temporary employees, guards and supervisors as defined in the Act.⁶

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by permanently replaced.

⁶ There are about 87 employees in the unit.

Those eligible to vote shall vote whether or not they desire to be represented by HEALTHCARE WORKERS' UNION, LOCAL 250, SERVICE EMPLOYEES INTERNATIONAL UNION,. The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. [Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote.](#) Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. North Macon Health Care Facility, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the NLRB Region 32 Regional Office, Oakland Federal Building, 1301 Clay Street, Suite 300N, Oakland, California 94612-521, on or before June 2, 2004. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (510) 637-3315. Since the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. Club Demonstration Services, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EST on June 9, 2004. The request may **not** be filed by facsimile.

Dated at Oakland California this 26th day of May, 2004.

/s/ Alan B. Reichard
Alan B. Reichard
Regional Director
National Labor Relations Board
Region 32

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